

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 135.

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER,
ATMORE L. BAGGOT, AND STERRETT TATE, PETI-
TIONERS,

vs.
DAVID J. WINN.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR HABEAS CORPUS FILED JANUARY 12, 1908.
HABEAS CORPUS AND RETURN FILED FEBRUARY 9, 1908.

(21,479.)

(21,479.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 135.

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER,
ATMORE L. BAGGOT, AND STERRETT TATE, PETI-
TIONERS,

vs.

DAVID J. WINN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print
Caption	<i>a</i>	1
Transcript from the circuit court of the United States for the south- ern district of New York	1	1
Writ of error.....	1	1
Clerk's certificate.....	2	1
Petition for writ of error.....	3	2
Order allowing writ of error.....	5	3
Summons.....	6	4
Bill of complaint.....	7	4
Notice of motion to produce books, &c.....	11	6
Affidavit of Ernest E. Baldwin.....	13	7
Agreement as to complaint.....	17	10
Answer.....	17	10
Affidavit of Nathaniel L. Carpenter	25	14
Memorandum in opposition to motion to produce books, &c....	28	15
Order granting motion to produce books, &c.....	30	17
Notice of motion for judgment by default.....	33	18
Affidavit of Ernest E. Baldwin.....	34	19

	Original.	Print
Exhibit A—Notice of motion	36	20
A—Affidavit.....	36	20
B—Copy of order.....	37	20
C—Letter, Abney to Boothby & Baldwin.....	37	20
Affidavit of Nathaniel L. Carpenter	38	21
Order granting motion and directing entry of judgment.....	40	22
Writ of inquiry.....	42	23
Marshal's return to same	43	24
Inquisition of damages ..	44	24
Judgment	46	26
Assignment of errors	48	27
Bond.....	55	30
Citation	59	32
Stipulation and order limiting record on appeal.....	60	33
Opinion	61	33
Judgment	63	35
Clerk's certificate.....	65	35
Writ of certiorari.....	66	36
Stipulation as to return to writ of certiorari.....	69	36
Return to writ of certiorari	71	37

Transcript of Record.

United States Circuit Court of Appeals for the Second Circuit.

JOSEPH N. CARPENTER et al., Plaintiffs in Error (Defendants Below),
vs.

DAVID J. WINN, Defendant in Error (Plaintiff Below).

Error to the Circuit Court of the United States for the Southern
District of New York.

Printed under the Direction of the Clerk.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Jan. 23, 1908. William Parkin, Clerk.

1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the Circuit Court of the United States for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court, before you, or some of you, between David J. Winn, plaintiff, and Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate, defendants, a manifest error hath happened, to the great damage of the said Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate as is said and appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 12th day of November, 1907, that the record and proceedings aforesaid being inspected, the said Judges of the United States Circuit Court of Appeals for the Second
2 Circuit may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of October, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

[L. s.]

JOHN A. SHIELDS,

*Clerk of the Circuit Court of the United States
of America for Southern District of New
York, in the Second Circuit.*

The foregoing writ is hereby allowed.

GEO. C. HOLT,

U. S. District Judge, Holding C't Court.

(Endorsed:) Copy received Oct. 17, 1907.—Boothby & Baldwin, Att'ys for Def't in Error.—Filed Oct. 17, 1907.—John A. Shields, Clerk.

UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 3 to 87, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Joseph N.

Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and

3 Sterrett Tate, Plaintiffs-in-Error, against David J. Winn,

Defendant-in-Error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of December, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

[SEAL.]

JOHN A. SHIELDS, *Clerk.*

United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Petition.

Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate, defendants in the above-entitled cause, feeling themselves aggrieved by the order entered herein on the 25th day of June, 1907, long before the time when said cause could be reached on the calendar for trial, the order entered herein on the 31st day of July, 1907, long before the time when said cause could be reached on the calendar for trial, and the judgment entered

4 herein on the 18th day of September, 1907, in pursuance of said orders directing the entry thereof, long before the time when the said cause could be reached on the calendar for trial, come now by John R. Abney, their attorney, and petition said court for an order allowing said defendants to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the

Second Circuit to review the said orders and judgment, under and according to the laws of the United States in that behalf made and provided.

And your petitioners will ever pray.

JOHN R. ABNEY,
Attorney for Defendants.

(Endorsed:) Filed Oct. 16, 1907.—John A. Shields, Clerk.

5 At a Stated Term of the United States Circuit Court for the Southern District of New York, held in the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 16th day of October, 1907.

Present: Hon. George C. Holt, Circuit Judge.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Order Allowing Writ of Error.

Upon motion of John R. Abney, Esq., attorney for defendants, and upon filing a petition for a writ of error and assignment of errors, it is

Ordered, that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Second Circuit, an order heretofore entered herein on June 25th, 1907, an order heretofore entered herein on July 31st, 1907, and the judgment heretofore entered herein on September 18th, 1907, in pursuance of said orders directing the entry of said judgment, and that a transcript of the record herein, consisting of said order of June 25th, 1907, the plaintiff's papers in the motion, and the defendants' affidavit and their memorandum, which contains their objections to the jurisdiction, power and discretion of the Court to grant said motion, the order of July 31st, 1907, the plaintiff's papers in the motion, and defendants' affidavit in opposition to the granting of said motion, and the judgment entered on September 18th, 1907, and all proceedings in the case.

6 GEO. C. HOLT,
District Judge, Sitting as Circuit Judge.

(Endorsed:) Filed Oct. 16, 1907.—John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fulier, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, this 29th day of January, in the year one thousand nine hundred and seven.

JOHN A. SHIELDS, Clerk.

BOOTHBY & BALDWIN,
Plaintiff's Attorneys,
Office and Post Office Address, 31 Nassau Street,
Borough of Manhattan, New York City.

(Endorsed:) Filed Aug. 1, 1907.—John A. Shields, Clerk.

United States Circuit Court for the Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

The plaintiff above named complains of the defendants by Boothby & Baldwin, his attorneys, and alleges and avers:

First. That the plaintiff is, and has been for a considerable period of time, engaged in the spinning and manufacture of cotton yarn, at Sumter, South Carolina, and is a citizen and resident of said State.

8 Second. Upon information and belief, that at all the times hereinbefore mentioned, the above-named defendants were copartners doing business under the firm name of Carpenter, Baggot & Company in the City of New York, and as such carried on the business of cotton brokers on the New York Cotton Exchange in said city, of which said partnership Joseph N. Carpenter and Nathaniel L. Carpenter were members, respectively, of the said New York Cotton Exchange, in the said City of New York.

Third. Upon information and belief, that the defendant Joseph N. Carpenter was and is a resident and citizen of Natchez, Missis-

issippi, and the defendants Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate were and are citizens and residents of the State of New York.

Fourth. Upon information and belief, that heretofore, to wit, on about the 4th day of September, 1906, the plaintiff employed the said defendants, as such brokers, to make and enter into, in their own name, but in his behalf, and for his account, contracts upon the floor of the said New York Cotton Exchange with other members of said Exchange, for the purpose and delivery on one hundred bales of cotton at the market price, to be delivered in the following November, and one hundred bales of cotton, at the market price, to be delivered in the following December, each bale of cotton to be of five hundred pounds in weight, and to replace such contracts as often as the same should be cancelled under the by-laws and rules of said Exchange, or otherwise, and to hold, carry and maintain such contracts for account of the plaintiff until the said cotton should be delivered, or until the plaintiff should order and direct the same to be closed out by sale or otherwise, all of which defendants for valuable consideration agreed to do.

Fifth. Upon information and belief, that as soon as the plaintiff had given said order to the said defendants to enter into said contracts for his account, and upon his behalf, as aforesaid, he duly caused to be sent to the defendants his check for two hundred dollars, payable at the Farmers' Bank and Trust Company, at Sumter, South Carolina, as security for the carrying out, by the plaintiff, of said contract on his part, and for margins upon said contract, which was at the rate of one dollar per bale; which said check was duly received by the defendants, cashed by them, and placed to the account of the plaintiff, and the plaintiff was at all times able, ready and willing to put up, with the defendants, such other proper margin and security on said contracts as should be required by said defendants.

Sixth. Upon information and belief, that in pursuance of said employment, the said defendants, for and in behalf of the plaintiff, and at his request, as aforesaid, entered into contracts upon the floor of the said Cotton Exchange, pursuant to its by-laws, rules and regulations, in their own name, with other members thereof, for the purchase and delivery of one hundred bales of cotton to be delivered in November, 1906, and agreed to pay for the same 9 and 14/100 cents per pound, and one hundred bales of cotton, to be delivered as aforesaid, in December, 1906, and agreed to pay for the same 9 and 27/100 cents per pound, and notified the plaintiff thereof.

Seventh. Upon information and belief, that on or about the 3d day of October, 1906, the said defendants, without having called upon the plaintiff for any additional margins, or security, and without notice to the plaintiff, and without his being in default in any way, and without his knowledge and consent, unlawfully, illegally, and arbitrarily closed out, cancelled and terminated the said contracts, by reason of which the plaintiff has been damaged in the sum of two thousand and seventy-five dollars;

and defendants have not returned, nor offered to return the said two hundred dollars, deposited by plaintiff with them, as aforesaid, as security and margin, although return thereof has been duly demanded, by which he has been damaged to the extent of two hundred dollars.

Wherefore, plaintiff demands judgment against the defendants in the sum of two thousand two hundred and sev-nty-five dollars, with interest thereon from the 3d day of October, 1906, with the costs of this action.

BOOTHBY & BALDWIN,
*Attorneys for Plaintiff, No. 31 Nassau Street,
Borough of Manhattan, City of New York.*

STATE OF NEW YORK,
County of New York, ss:

Ernest E. Baldwin, being duly sworn, deposes and says: That he is a member of the firm of Boothby & Baldwin, the attorneys for the plaintiff in the above-entitled action; that the allegations contained in the foregoing complaint are true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes the same to be true. That the reason why this complaint is not verified by the plaintiff is that he is a non-resident of and absent from the State of New York, and that the sources of deponent's information and the grounds of his belief are from statements made to him by the plaintiff, and
11 from having in his possession letters, statements and documentary evidence furnished to him by the plaintiff, and from other sources.

(Signed)

ERNEST E. BALDWIN.

Sworn to before me this 29th day of January, 1907.

LAMAR HARDY,
Notary Public, N. Y. Co.

(Endorsed:) Filed Aug. 1, 1907.—John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

SIR: Please take notice that upon the pleadings herein and the answering affidavit of Ern-st E. Baldwin, verified the 6th day of May, 1907, and upon all other papers and proceedings herein, *as* shall move this Court, at a Term thereof for the hearing of motions, to be held in the United States Post Office and Court House Building, in the Borough of Manhattan, City of New York, on the 10th day of May, 1907, at the opening of Court, or as soon thereafter as counsel may be heard, for an order directing that the defendants

12 produce, before the trial of this action, at such time and place as the Court may designate, all their books, papers, writings, accounts books, day books, blotters, journals, registers, cash books, bill books, letter books, sales books, check books, contracts, contract slips and memoranda made or received by them, their agents and employees, which contain any memoranda of any business transactions had for and in behalf of or relating to the plaintiff herein, for the years 1905 and 1906, and more particularly of the purchase and sale of two hundred (200) bales of cotton, one hundred (100) deliverable in November, 1906, and one hundred (100) deliverable in December, 1906, or which relate to any way to the purchase and sale of said cotton, whether alleged to have been made for the account of the plaintiff herein, or P. G. Bowman, of Sumter, South Carolina, or for the Sumter Banking and Mercantile Company, or any part of any such books, documents and writings, which in any way refer to or contain entries of, or mention the two hundred bales of cotton set forth and described in the complaint herein; and permit the plaintiff, his attorneys and agents, at said time and place, to investigate, copy and make abstracts of such documents, books and writings, and directing that the defendant, upon failure to comply with said order, shall suffer judgment against him, as in cases of nonsuit, and for such other and further relief as to the Court may seem just and proper.

Dated New York, May 6th, 1907.

Yours, etc.,

BOOTHBY & BALDWIN,
*Attorneys for Plaintiff, No. 31 Nassau Street,
Borough of Manhattan, City of New York.*

To John R. Abney, Esq., 27 William Street, Borough of Manhattan, City of New York.

13 United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. RAGGOT, and STERRETT TATE, Defendants.

COUNTY OF NEW YORK, ss:

Ernest E. Baldwin, being duly sworn, says: That he is a member of the firm of Boothby & Baldwin, the attorneys for the plaintiff in the above-entitled action, and is familiar with all the papers and proceedings therein.

That this is an action at law which was brought by the plaintiff, who is a spinner of cotton at Sumter, South Carolina, against the defendants to recover damages on account of breach of contract, as appears from the pleadings herein, and was commenced by the service of a summons and complaint on the 30th day of January,

1907, and is now at issue, the answer having been served on the 27th day of March, 1907.

The facts upon which the action is based are, shortly, as follows: Plaintiff employed the defendants, who were cotton brokers in the City of New York, on or about the 4th day of September, 1906, to make and enter into, in their own names, but in his behalf, and for his account, contracts on the New York Cotton Exchange, with other members thereof, for the purchase and delivery of one hundred bales of cotton at the market price, to be delivered the following November, and one hundred bales of cotton, at the market price, to be delivered the following December, and to replace the same as often as they should be cancelled under the by-laws and rules of said Exchange, or otherwise, and to hold and carry them for account of the plaintiff until the said cotton should be delivered, or until the plaintiff should order and direct them to be closed out by sale, or otherwise. Defendants, for a valuable consideration, agreed to do this, and in pursuance of said employment, on or about that day, entered into contracts for said amounts of cotton deliverable in said months, in their own names, but for and in behalf of the plaintiff, on said Exchange, at the price of 9 and 14/100 cents per pound for November cotton, and 9 and 27/100 cents per pound for December cotton, and notified plaintiff thereof. At the time of giving the said order to the defendants to enter into said contracts as aforesaid, plaintiff duly caused his check for \$200, drawn upon the Farmers' Bank & Trust Co., of Sumter, South Carolina, to be sent to the defendants, as security and margins for said contract, which check the defendants cashed and placed to the amount of the plaintiff. Subsequently, and on or about the 3d day of October, 1906, the defendants, without calling upon the plaintiff for additional margins, or security, and without notice to the plaintiff, and without his being in default in any way, and without his knowledge and consent, unlawfully, illegally and arbitrarily closed out, cancelled and terminated the said contracts, to plaintiff's damage in the sum of two thousand and seventy-five dollars (\$2,075). Defendants likewise have retained the said two hundred dollars deposited by plaintiff as aforesaid as security and margins, and have not offered to return the same. Judgment is demanded for the sum of two thousand two hundred and seventy-five dollars, with interest from October 3, 1906.

For defence, the defendants aver that they were not employed by the plaintiff to enter into said contracts, but were employed by one P. G. Bowman, of Sumter, South Carolina, for whom they were buying and selling cotton upon said New York Cotton Exchange, and who had an arrangement with them for putting up margins to secure them for the continuance of said arrangement. That the bales of cotton set forth in the complaint, deliverable in November and December, were for the order of the said P. G. Bowman, pursuant to an agreement by which the said Bowman was to make good any margins upon call from the defendants, and that they called upon him for further margins on September 14, 19, and on September 26, 1906, which Bowman refused and omitted to for-

ward and put up, and consequently defendants notified him that unless he did put up further margins to carry out said contracts, that they would have to close the same, which they did on October 3, 1907. They admit in their answer that notice of the purchase of said cotton under said contracts may have been inadvertently made out and sent by their clerks to the plaintiff instead of to the said Bowman.

It is, therefore, apparent that the real point in issue is whether there was any contractual relation between the plaintiff and the defendants, and it is necessary and material to be proved as a fact in this action.

Deponent further says that he is in possession of purchase slips, purporting to have been made out by the defendants to the plaintiff, and forwarded to the plaintiff at his home, in Sumter, South Carolina, which indicate that defendants did enter into the con-
16 tracts for plaintiffs as heretofore described and deponent is likewise in possession of the check for two hundred dollars, for the margins before referred to, which purports to bear the signature of the defendants, and which was duly cashed.

The defendants have denied the employment, but have admitted that notice of the purchase of the said cotton might have been sent to plaintiff by mistaken, instead of the said Bowman.

Deponent avers that the books, documents and writings in the possession and control of the defendants contain evidence pertinent to the issues herein, and throw light upon the contested point: for whose account the said contracts were entered into and under what circumstances the notice was sent, to the plaintiff, of the making of said contracts, and to whom the proceeds of the two hundred dollar check *was* credited, and will likewise show when the said contracts were closed and terminated, at what price, and the amount realized.

Deponent further avers that it is necessary in the preparation of the case for trial, that the plaintiff and his attorneys should have the opportunity to make copies and transcripts of and from said books, documents and writings that pertain to said contracts and said check. That an inspection and perusal thereof at the trial only would be of little or no benefit to the plaintiff in the preparation of his case, inasmuch as an unfamiliarity with said books, and the method of keeping the same, to the plaintiff and his attorneys, would delay and hinder the orderly and speedy trial of the case.

Deponent further says that a more particular description of the said books, documents and writings cannot be given by plaintiff or his attorneys.

Deponent further says that the reason the affidavit of the plaintiff cannot be presented, is that he resides at Sumter, South Carolina, and all of the documents which were in his possession have
17 been and now are in the possession of deponent, with reference to the issues in this case. That no previous application for this order has been made.

(Signed)

ERNEST E. BALDWIN.

Sworn to before me this 6th day of May, 1907.

(Signed)

LAMAR HARDY,
Notary Public, N. Y. Co.

Complaint.

It is agreed that this is the same as the complaint above printed, verified the 29th day of January, 1907, and that therefore the copy of complaint need not be printed here.

United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Answer.

The defendants above named, answering the complaint herein by John R. Abney, their attorney, for answer thereto say:

18

I.—For a First Defense.

1. They deny any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "First" of the complaint.

2. Upon information and belief, they deny each and every allegation contained in all the other paragraphs of the complaint, except as follows: They admit that all of them except Sterrett Tate were copartners doing business as cotton brokers on the New York Cotton Exchange, in said city, of which said partnership said Joseph N. Carpenter and Nathaniel L. Carpenter were members, respectively, of the said Cotton Exchange of the City of New York, and said Sterrett Tate became a member of said firm on the 1st day of October, 1906, and continued to be a partner thereafter; they admit that Joseph N. Carpenter was and is a resident of Natchez, Mississippi, and the defendants Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate were and are residents of the State of New York; they deny any knowledge or information sufficient to form a belief as to the truth of the allegation that the plaintiff was at all times able, ready and willing to put up, with the defendants, such proper margin and security on contracts mentioned in the complaint, as should be required by the defendants; they admit that a notice of purchase may have been inadvertently made out and sent by one of their clerks to plaintiff instead of to one P. G. Bowman, of Sumter, South Carolina, for whom it was intended by defendants; and they admit that they have not delivered \$200 to the plaintiff, although he has demanded that sum.

II.—For a Second Separate Defense.

1. That prior to the 13th day of September, 1906, one
19 P. G. Bowman, of the City of Sumter, South Carolina, engaged defendants, except Sterrett Tate, to buy and sell for him in different names cotton for future delivery on the New York Cotton Exchange, and make the contracts on the exchange with brokers thereof in said defendants' own names, but carrying the contracts for said cotton for the use and benefit of said Bowman, and he promised and agreed with said defendants that he would be responsible to them for said contracts and would put up such margin thereon as the defendant might call on him for from time to time; and, upon said promise and agreement, said defendants had bought and sold and were carrying for said Bowman certain contracts for cotton to be delivered in the future and gave credit to said Bowman in regard to the liability thereon and to no other person than said Bowman.

2. That on September 13, 1906, in pursuance of said promise and agreement, said defendants were carrying for said Bowman contracts for five hundred bales of cotton to be delivered in January, 1907, and one thousand bales of cotton to be received in December, 1906, and they had in hand as margins therefor \$503.41.

3. That on said 13th day of September, 1906, they received instructions from said Bowman to buy an additional one thousand bales of cotton to be delivered in November, 1906, saying margin was remitted, and in pursuance of said promise and agreement, they purchased, and entered into contract in their own names on said exchange for said number of bales, notified said Bowman of the same, and gave said Bowman credit thereon and only him; and on September 14, 1906, said defendants received instructions from said Bowman to buy an additional one hundred bales of cotton to be
20 delivered in November, 1906, and an additional one hundred bales of cotton to be delivered in December, 1906, and also informed them that margin was mailed that day, and in pursuance of said promise and agreement, said defendants purchased and entered into contracts in their own names, for said cotton, and notified said Bowman of the same and gave him credit thereon and only him.

4. That on September 17, 1906, upon said Bowman's instructions and in pursuance of said promise and agreement, said defendants bought one thousand bales of cotton to be received in December, 1906, and thereby closed out the sale of the aforesaid one thousand bales of cotton sold for delivery in December.

5. That on September 17, 1906, defendants not having received the margins, notified said Bowman, but only on September 19, after business hours and after repeated inquiry of him, did defendants receive from him, for margins, checks to the amount of \$1,200, and they on some bank or banks at Sumter, South Carolina, which checks defendants deposited in bank in New York for collection at the bank or banks at said Sumter, but \$1,000 thereof was not paid upon presentation in South Carolina, and of this non-payment said

Bowman was notified, and he made repeated promises to make the same good, but never did so.

6. That on September 21, 1906, said defendants, although thinking said check for \$1,000 was good, called said Bowman for further margins on all contracts which they had entered into, but he did not furnish the same.

7. That on September 22, 1906, said defendants again called said Bowman for further margins on all the contracts which they had entered into, but he did not furnish the same.

21 8. That on September 24, 1906, said defendants again called said Bowman for further margins, on all the contracts which they had entered into, but he did not furnish the same.

9. That on September 25, 1906, said defendants again called said Bowman for further margins on all the contracts which they had entered into, but he did not furnish the same.

10. That on September 26, 1906, said check for \$1,000 not having been made good and defendants not having heard from said Bowman on the call for further margins of September 25th, and not being able to reach him on long distance telephone which defendants tried to do on said September 25th, they sold one thousand bales of cotton for November delivery and notified said Bowman's office of the same.

11. That on the 28th day of September, 1906, said defendants received from said Bowman, who was then in the City of Washington and pretending to be on his way to New York to make his margins good, an order to sell one thousand bales of cotton to be delivered in December, 1906, and said defendants, in pursuance of said promise and agreement, sold, and entered into contract for, such one thousand bales and notified said Bowman of the same; and said Bowman came to New York, as they are informed and believes, and returned to Sumter, South Carolina, without seeing defendants and without complying with their request for margins.

12. That on October 1, 1906, said defendants notified said Bowman that unless he put up margins they would close out all of said contracts; and he refused to put up said margins.

22 13. That on October 2, 1906, defendants again called said Bowman for margins, and after giving him time to put up said margins, and he refusing to do so, said defendants purchased five hundred bales of cotton to be delivered in December, thus closing out a part of said contracts, and notified him of the same; and on October 3, 1906, after giving said Bowman ample time to put up said margins, said defendants closed out all other of said contracts and notified him of the same.

14. That upon the closing out of all of said contracts aforesaid, Bowman became indebted to defendants for money paid out by defendants on the same, and commissions, after deducting the margins on hand, in the sum of \$3,002.34, no part of which has ever been paid by him, although payment has been demanded.

15. That said defendants never had any agreement with the plaintiff with regard to any of said contracts and never had any understanding or agreement that they were to send notices or calls for mar-

gin to any person except said Bowman; that they were under no obligation whatever to do so; and that they gave credit solely to said Bowman in making said contracts and looked solely to him for margins and were to notify him and him only when calls were to be made.

16. Upon information and belief, that plaintiff and said Bowman are residents of the same place and this action is brought at the suggestion of said Bowman to get money from defendants on part of said contracts without said Bowman paying what he owes on the others.

III.—For a Third and Separate Defense.

1. That the order to buy one hundred bales of cotton for November delivery and one hundred bales of cotton for December delivery mentioned in the complaint, was given by one P. G. Bowman, of Sumter, South Carolina, and under the understanding and agreement had between said Bowman and defendants that said defendants were to call said Bowman for margin on said contracts whenever said defendants desired it, and defendants were not to call any one else for said margins.

2. That said defendants did call said Bowman for margin in regard to said contracts on September 14, 1906, and said Bowman's promised margin, but no check was received until late on September 19, 1906; that said defendants called said Bowman for \$200 further margin on account of said contracts on September 21, 1906, and said Bowman refused and neglected to put up the same with defendants; that said defendants again called said Bowman for margin on said contracts on September 24, 1906, notifying him that they showed a loss of \$50, which was after applying margin on hand, and said Bowman refused and neglected to put up said further margin; that on the 1st day of October, 1906, defendants notified said Bowman that unless he put up further margin they would not carry his contracts further, and said Bowman refused and neglected to put up said margin; and that on October 3, 1906, after defendants had waited a reasonable time for said Bowman to comply with their demand for margin, they closed all the contracts which they had been carrying on order of said Bowman.

3. Upon information and belief, that the plaintiff knew of said calls upon said Bowman by said defendants for margins, and of his refusals.

Wherefore defendants ask judgment that the complaint be dismissed and for costs and disbursements to them.

(Signed)

JOHN R. ABNEY,

Defendants' Attorney, 27 William Street,

New York City, N. Y.

24 STATE OF NEW YORK,

County of New York, ss:

Nathaniel L. Carpenter, being duly sworn, deposes and says that he is one of the defendants above named; that he has read the foregoing and knows the contents there-, and that the same is true of

his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

NATHANIEL L. CARPENTER.

Sworn to before me this 27th day of March, 1907.

[SEAL.]

SAMUEL SCHWARTZMAN.

Notary Public, N. Y. Co.

(Endorsed:) Notice of motion, affidavit and copy of pleadings.—Filed June 21, 1907.

25 United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Affidavit.

COUNTY OF NEW YORK, ss:

Nathaniel L. Carpenter, being duly sworn, deposes and says in reply to the affidavit of Ernest E. Baldwin, dated 6th day of May, 1907:

I. That he is one of the defendants in the above stated action, and he verified the answer to the complaint herein, referred to in said affidavit of Ernest E. Baldwin, in that he reaffirms the statements made in said answer to said complaint.

II. That P. G. Bowman and the Sumter Banking and Mercantile Company, referred to in the notice attached to said affidavit of Ernest E. Baldwin, are, as he is informed and believes, both at and doing business at Sumter, South Carolina, where said affidavit states that the plaintiff is now in business; and that it is just as necessary in the preparation of the case for trial that the defendants and their attorney should have the opportunity of making copies and transcripts of and from the books, documents and writings of said Bowman, of said Sumter Banking and Mercantile Company, and of plaintiff, as it is for the plaintiff and his attorneys to have the opportunity to make copies and transcripts of and from defendants' books, documents and writings, as alleged in said affidavit.

26 III. That the defendants are in the business of commission cotton merchants, doing business on the New York Cotton Exchange, and the other members of said Cotton Exchange, and the firms doing business thereon, are more or less their rivals in business; and the interests of customers doing business through the members and firms of said Exchange are more or less antagonistic to each other, and said customers desire that their names and transactions be kept secret; it is therefore necessary that the books and papers of defendants be guarded and kept secret from any and all persons outside of the firm

and their clerks, until such an outsider proves himself to be incontrovertably interested in a transaction and having privity thereto with defendants.

IV. That deponent is informed and believes that the firm of Boothby & Baldwin are the attorneys for some members or firms of said Cotton Exchange other than defendants; and therefore it is against the interests of defendants' customers that defendants' books should be inspected by that firm or any member of it; and, as deponent does not know what relation, if any, there exists between plaintiff and said Bowman, and said Sumter Banking and Mercantile Company, deponent submits that defendants' books should not be opened to inspection to the plaintiff.

V. That defendants have long since given said Bowman the dates, showing when the contracts claimed by plaintiff were closed and terminated, at what price, and the amount realized, and also
27 the names of the members or firms of the said Cotton Exchange with whom said contracts were closed and terminated.

VI. That the firm of Boothby & Baldwin have been attorneys for said Cotton Exchange, as well as members and firms of the same, and ought to be familiar, and deponent is informed and believes they are familiar, with the books generally kept, and with the way in which members and firms of said Exchange keep them, and with the principle of the business of cotton commission merchants; and therefore it ought not to delay the orderly and speedy trial of the case, for defendants' books to be inspected on the trial, if they are decided to be admissible in evidence at all.

NATHANIEL L. CARPENTER.

Sworn to and subscribed before me this May 16, 1907.

[SEAL.]

F. F. MILLER,
Notary Public.

(Endorsed:) Filed June 21, 1907.—John A. Shields, Clerk.

28 United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Memorandum for Defendants in Opposition to Motion for an Order Directing Defendants to Produce All Their Books, Papers, etc., Before the Trial of This Action.

I.

Plaintiff has no right to see defendants' books at any time until he has proved on the trial that the defendants were his agents.

II.

The statute does not authorize the compulsion of defendants to produce their books before the trial and permit copies thereof to be taken.

III.

Plaintiff and his attorney have filed a complaint duly sworn to, alleging that he ordered the defendants to purchase the cotton mentioned; and therefore he does not need other evidence than he has in his possession, as he was willing to swear to the allegation on the proofs he had. He does not allege that the defendants have any of his papers.

29

IV.

If he needs any other evidence, Bowman and the Sumter Banking and Mercantile Company can furnish it. He knows what relation there was between him and them, and they know what happened between them and the defendants. There is no pretext that they are not able to furnish all the testimony there is on the plaintiff's side.

V.

Plaintiff is not permitted, under this statute, to inspect the books in order merely to search and know the evidence of defendants.

VI.

The statute does not apply where a subpoena *duces tecum* will reach the books at the time of the trial.

VII.

As to the transactions themselves, the defendants have given Bowman the names of the brokers from whom they bought and to whom they sold; and, under such circumstances, even the State Court would not permit an inspection of defendants' books.

VIII.

Plaintiff's attorneys should not be permitted to see the books, as they are attorneys for brokers who are rivals to defendants.

IX.

If plaintiff's attorneys are permitted to see the books, it should be only at the trial.

30

X.

The motion is premature and without merit and should be dismissed.

JOHN R. ABNEY,
Attorney for Defendants.

27 William Street, Borough of Manhattan, New York City, New York.

(Endorsed:) Filed June 21, 1907.

Order of June 25, 1907.

At a Stated Term of the United States Circuit Court for the Southern District of New York, Held in the United States Court House and Post Office Building in the City of New York, Borough of Manhattan, City of New York, on the 25th Day of June, 1907.

Present: Hon. George C. Holt, District Judge.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

A motion having been made by the plaintiff, upon notice, for an order directing the defendants to produce, before the trial of this action, at such time and place as the Court may designate, all their books, papers, writings, account books, day books, blotters, journals, registers, cash books, bill books, letter books, sales books, check books, contracts, contract slips, and memoranda, made or received by them, their agents or employees, which contain any memoranda of any business transactions had for and in behalf of, or relating to, the plaintiff herein, for the years 1905 and 1906, and more particularly to the purchase and sale of two hundred bales of cotton, one hundred deliverable in November, and one hundred deliverable in December, 1906, or which relate in any way to the purchase and sale of said cotton, either alleged to have been made for the account of the plaintiff herein or P. G. Bowman of Sumter, South Carolina, or for the Sumter Banking and Mercantile Company, or any part of any such books, documents or writings which, in any way, refer to or contain entries of, or mention the two hundred bales of cotton set forth and described in the complaint herein, and permit the plaintiff, his attorneys or agents, at said time and place, to investigate, copy and make extracts from such documents, books and writings, and if the defendants should fail to comply with such order, should suffer judgment against them as in cases of nonsuit, and for other relief, which said motion having duly come on for hearing, and after hearing Ernest E. Baldwin, of counsel for the plaintiff, in favor of said motion, and John R. Abney, Esq., of counsel for the defendants, in opposition thereto; and after reading and filing the affidavit of Ernest E. Baldwin in support of said motion, verified the 6th day of May, 1907, and the complaint of the plaintiff herein, and the answer of the defendant- herein, and the affidavit of Nathaniel L. Carpenter, verified the 16th day of June, 1907, in opposition thereto, and after due consideration, it is hereby

Ordered that in the event the defendants fail to comply with this order, judgment against them shall be entered by default.

(Endorsed:) Filed June 26, 1907.—John A. Shields, Clerk.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

SIR: Please take notice that upon the annexed affidavit of Ernest E. Baldwin, verified the 16th day of July, 1907, and the pleadings and all the papers herein, the plaintiff will move before the United States Circuit Court for the Southern District of New York, at Chambers, in the United States Court House and Post Office building, in the Borough of Manhattan, City of New York, on the 31st day of July, 1907, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for judgment by default against defendants, in favor of the plaintiff, pursuant to Section 724 of the Revised Statutes, for the failure of the defendants to comply with the order entered herein on the 25th day of June, 1907, granting plaintiff leave to examine the books, papers and documents

34 of the defendants, pertinent to the issue herein, and for such other and further relief in the premises as to the Court may seem just and fit.

Dated N. Y., July 16th, 1907.

Yours, &c., BOOTHBY & BALDWIN,
Attorneys for Plaintiffs, No. 31 Nassau Street,
Borough of Manhattan, City of New York.

To John R. Abney, Esq., Attorney for Defendants, No. 27 William Street, Borough of Manhattan, New York City.

United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

STATE OF NEW YORK,
County of New York, ss:

Ernest E. Baldwin, being duly sworn, deposes and says: That he is a member of the firm of Boothby & Baldwin, the attorneys for the plaintiff herein.

35 That the summons and complaint in this action were served upon the defendants on the 20th day of January, 1907. On the 27th day of March, 1907, the defendants, individually and as copartners, served their answer.

On May 3d a note of issue was filed, placing this case upon the calendar of this Court, and on May 4th a notice of trial was duly served upon the defendants' attorney, John R. Abney, Esq., in the City of New York, who duly appeared in the action.

On May 6th a notice of motion was served upon defendants' said attorney for an inspection of defendants' books, under Section 724 of the Revised Statutes, a copy of which said notice of motion, together with the affidavits annexed thereto, are hereto attached marked Exhibit "A."

After a number of adjournments by stipulation, the said motion came on to be heard before Judge Holt, sitting in Circuit, and after hearing deponent in behalf of said motion, and John R. Abney, attorney for defendants, in opposition thereto, the motion made to inspect the books as aforesaid was granted, and an order to that effect was entered on June 25th, 1907, and on the 1st day of July said order was served on defendants' attorney, a copy of which is hereto attached marked Exhibit "B."

That on the 2d day of July, 1907, deponent made a demand upon the defendants for an examination of their books, papers and documents, etc., as provided in said order, and was subsequently notified by defendants' attorney, said John R. Abney, that he would notify deponent within a day or two whether or not his clients would comply with the order.

Subsequently and on the 9th day of July, 1907, the said John R. Abney notified deponent that his clients, the defendants in
36 this action, would not comply with the said order, as it was their purpose to contest the right of the Court to grant said order, and that his clients had instructed him to have the order reviewed by a higher Court, a copy of which notification is hereto attached marked Exhibit "C."

That the time within which defendants were to comply with said order and allow such inspection as aforesaid, has elapsed, and the terms of said order have in no way been complied with.

Wherefore plaintiff prays that judgment be given against the defendants by default, pursuant to Section 724 of the Revised Statutes, and that a writ of inquiry be issued to the marshal of the United States Circuit Court for the Southern District of New York, to assess the damages which the plaintiff has suffered by reason of the matters complained of against the defendants.

ERNEST E. BALDWIN.

Sworn to before me this 16th day of July, 1907.

LAMAR HARDY,
Notary Public, New York County.

EXHIBIT "A."

It is agreed that this copy of Notice of Motion is the same as the Notice of Motion above printed, dated May 6, 1907, and need not be printed.

EXHIBIT "A."

It is agreed that this copy of the affidavit of Ernest E. Baldwin is the same as the affidavit above printed, dated May 6, 1907, and need not be printed.

37

EXHIBIT "B."

It is agreed that this copy of the order of June 25, 1907, is the same as the order above printed, dated June 25, 1907, and need not be printed.

EXHIBIT "C."

John R. Abney,
Lord's Court Building, 27 William Street.

NEW YORK, July 9, 1907.

WINN

v.

JOSEPH N. CARPENTER et al.

Boothby & Baldwin, Esqrs., 31 Nassau Street, New York City.

DEAR SIR: As the above case will not come on for trial for over a year at least, I cannot read section 724 of the United States Re-

vised Statutes as you and the learned Judge do; and I have been obliged to tell my clients so. They, with great respect for the court, and thinking that such an order as you have obtained is injurious to the cotton merchant business and their rights, and in further view that in other circuits it has been held that the court has no power or discretion to grant such an order, they have instructed me to carry the order up to the higher courts for review of the same. And to that end, and as your Mr. Baldwin, who has charge of the case for you, informs me that he wishes to go away for his vacation before July 15th, I now inform you that with great deference to the court, my clients have decided not to comply with the order, as that is the only way in which they can have it reviewed.

Yours truly,
(Sd.)

JOHN R. ABNEY.

(Endorsed:) Affidavits and Notice of Motion for Judgment.—
Filed July 16, 1907.

38 United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L.
BAGGOT, and STERRETT TATE, Defendants.

Affidavit.

STATE OF NEW YORK,

County of New York, ss:

Nathaniel L. Carpenter, being duly sworn, deposes and says in opposition to plaintiff's motion for judgment against the above-named defendants:

1. That he is one of the defendants in the above-stated action, and he verified the answer to the complaint herein and also the affidavit in opposition to the motion upon which the order of June 25, 1907, was granted, a copy of which affidavit is hereto attached as Exhibit I and made part of this affidavit; and he reiterates all the statements made in his said former affidavit and contained in said copy hereto attached.

2. That said motion and this motion are made not only before the trial, but, as he is informed and believes, the above case will not come on for trial in its regular order on the calendar for over a year at least.

3. That, through their counsel, the defendants objected on the former motion that the Court had no jurisdiction, authority
39 or discretion to grant the said order of June 25, 1907; and, with great respect for the Court, the defendants have, for the reasons set forth in deponent's said former affidavit and the letter of their counsel annexed to the moving affidavit as Exhibit "C," declined to comply with said order.

Wherefore, upon the grounds set forth in said affidavit and letter,

defendants object that the Court has no jurisdiction, authority or discretion to grant this motion for judgment and a writ of inquiry; and they ask that the motion be dismissed.

NATHANIEL L. CARPENTER.

Sworn to before me this July 31, 1907.

[SEAL.]

H. E. HAYNES,

Notary Public, No. 181, Kings County, N. Y.

Certificate filed in New York County.

(Endorsed:) Filed August 1, 1907.—John A. Shields, Clerk.

Affidavit of Nathaniel L. Carpenter, Dated May 16, 1907.

It is agreed that this copy of the affidavit of Nathaniel L. Carpenter is the same as the affidavit above printed, dated May 16, 1907, and need not be printed.

(Endorsed:) Filed August 1, 1907.—John A. Shields, Clerk.

40 At a Stated Term of the United States Circuit Court for the Southern District of New York, Held at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 31st Day of July, 1907.

Present: Hon. Charles M. Hough, District Judge.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

A motion having been made by the plaintiff upon notice, for an order for a judgment against the defendants by reason of their failure to comply with the order of this Court entered herein on the 25th day of July, 1907, granting plaintiff leave to examine the books, papers and documents of the defendants pertinent to the issue herein, and for other relief, upon the ground that the defendants and each of them had failed to comply with the provisions of said order, and denied plaintiff an opportunity to examine said books, papers and documents as provided for in said order; and said motion having come on for hearing, and after hearing Ernest E. Baldwin, of counsel for the plaintiff, in support of said motion, and John R. Abney having appeared for the defendant- in opposition thereto; and after reading and filing the affidavits of Ernest E. Baldwin, verified respectively the 6th day of May, 1907, and the 16th
41 day of July, 1907, and the said order, and the affidavit of Nathaniel L. Carpenter, verified July 31, 1907;

And it appearing to my satisfaction that the defendants, contrary to said order, declined and refused to allow the plaintiff to

examine and inspect their books, papers and documents, designated therein and pertinent to the issue herein, and make copies thereof, within the time mentioned in said order, or to comply with any of the terms thereof;

Now, therefore, upon the application of Boothby & Baldwin, attorneys for the plaintiff, and under and pursuant to Section 724 of the Revised Statutes of the United States, and the Rules of this Court with respect to defaults, it is

Ordered that the defendants, and each of them, are hereby declared to be in default, and the plaintiff is authorized and empowered to enter judgment against the defendants by default for such damages as he has suffered by reason of the matters set forth in the complaint herein and to assess which damages the Clerk of this Court is hereby directed to issue a writ of inquiry directed to the Marshal of the United States for the Southern District of New York to, as soon as possible and convenient, summon a jury to convene at the office of said Marshal in the United States Post Office and Court House Building, in the City of New York, upon such date as shall be designated in the writ, which said jury shall then and there legally determine and assess the damages that plaintiff has suffered by reason of the matters complained of in the complaint herein, whereupon the Clerk shall enter judgment for such amount in favor of the plaintiff, and against the defendants, and for the legal costs and disbursements.

C. M. HOUGH, U. S. J.

(Endorsed:) Filed Aug. 1, 1907.—John A. Shields, Clerk.

42 UNITED STATES OF AMERICA,
Southern District of New York, ss:

The President of the United States of America to the Marshal of the Southern District of New York, Greeting:

Whereas, in an action brought by David J. Winn against Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate in our Circuit Court for the Southern District of New York such proceedings were had upon the due personal service of the summons and complaint herein upon said Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate, that the said David J. Winn obtained an order of the said Court for a writ of inquiry to be issued from this Court directed to the Marshal to determine the facts and assess the damages to be awarded to the plaintiff herein according — rules and practice of this Court, a copy of the complaint in said action being hereunto annexed;

Therefore, we command you that by the oaths of twelve good and lawful men of your district, you diligently inquire what damages the said David J. Winn hath sustained for and on account of the matters alleged in the said complaint, and that you on or before the 29th day of August, 1907, return to the office of the Clerk of said Court the inquisition taken by you by virtue of this writ, under your seal and the seals of those by whose oaths you shall take the inquisition, together with this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court for the Southern District of New York, this 29th day of August, 1907.

43 Attest my hand and seal of the United States Circuit Court for the Southern District of New York, at the Clerk's office in the City of New York, this 27th day of August, 1907.

JOHN A. SHIELDS,
*Clerk of the United States Circuit Court for the
Southern District of New York.*

(Endorsed:) United States Circuit Court, Southern District of New York.—David J. Winn, Plaintiff, against Joseph N. Carpenter *et al.*, Defendants.—Writ of Inquiry.—See U. S. Marshal's return inside.—August 29/07.

United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Marshal's Return.

The execution of the within writ appears by the inquisition hereunto annexed.

WILLIAM HENKEL,
*United States Marshal for the Southern
District of New York.*

August 29th, 1907.

44 United States Circuit Court, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Inquisition of Damages.

Inquisition taken at the office of the United States Marshal for the Southern District of New York, in the Federal Building, in the Borough of Manhattan, City of New York, on the 29th day of August, 1907, before William Henkel, United States Marshal, by virtue of the annexed writ to him delivered, to inquire of matters in the said writ specified by the oaths of John A. Bigelow, Thomas Henry, Henry Cunningham, John Neal, Clarence A. Parsons, Jr., Joseph Cullen, Thomas Sussman, William F. Searing, Thomas Moore, Charles B. Hoag, George G. Lush and Charles P. Hanson,

twelve good and lawful men of the said District, who, being chosen, tried and sworn, say upon their oath that David J. Winn, in said writ named, has sustained damages by reason of the premises in the said writ and annexed complaint mentioned in the amount of two thousand two hundred and seventy-five dollars (\$2,275), with interest thereon from the 12th day of October, 1906, amounting to one hundred and twenty and 20/100 dollars (\$120.00), total amount two thousand three hundred and ninety-five and 20/100 dollars (\$2,395.20), with the costs of this action.

45 In witness whereof, as well I, the said Marshal for the Southern District of New York, as the said jurors, have set our seals to the said inquisition the day and year above written.

WILLIAM HENKEL,

*United States Marshal for the Southern District
of New York.*

JOHN A. BIGELOW.	[L. S.]
THOMAS HENRY.	[L. S.]
HENRY CUNNINGTON.	[L. S.]
JOHN NEAL.	[L. S.]
CLARENCE A. PARSONS.	[L. S.]
JOSEPH CULLEN.	[L. S.]
THOMAS SUSSMAN.	[L. S.]
WILLIAM F. SEARING.	[L. S.]
THOMAS MOORE.	[L. S.]
CHARLES B. HOAG.	[L. S.]
GEORGE G. LUSH.	[L. S.]
CHARLES P. HANSON.	[L. S.]

DAVID J. WINN

vs.

JOSEPH N. CARPENTER et al.

We, the undersigned jurymen, have received from William Henkel, United States Marshal for the Southern District of New York, the sum of three (\$3) dollars each for services rendered as jurors on August 29th, 1907, in the above-entitled inquiry.

Foreman: JOHN A. BIGELOW.
 THOMAS HENRY.
 HENRY CUNNINGHAM.
 JOHN NEAL.
 CLARENCE A. PARSONS.
 JOSEPH CULLEN.
 THOMAS SUSSMAN.
 WILLIAM F. SEARING.
 THOMAS MOORE.
 CHARLES B. HOAG.
 GEORGE G. LUSH.
 CHARLES P. HANSON.

I hereby certify that the above statement is correct.

WILLIAM HENKEL,
United States Marshal, S. D. N. Y.

Dated New York, August 29th, 1907.

(Endorsed:) Filed Aug. 29, 1907.—John A. Shields, Clerk.

Circuit Court of the United States, Southern District of New York.

DAVID J. WINN, Plaintiff,
against

NATHANIEL L. CARPENTER, JOSEPH N. CARPENTER, ATMORE L.
BAGGOT, and STERRETT TATE, Defendants.

The complaint in this action was served upon the defendants on the 30th day of January, 1907. The defendants duly appeared, and upon the 27th day of March, 1907, served their answer.

Upon the 21st day of June, 1907, the plaintiff made a motion to inspect the books, documents and other writings in the possession of the defendants concerning matters pertinent to the issue herein, which motion was decided in favor of the plaintiff. Whereupon the defendants declined to comply with said order and permit an inspection of their said books, documents and papers, etc., provided for therein, and the time in which said inspection and examination was to be had expired without such inspection and examination being permitted by the defendants, or any part of said order upon their part being complied with.

Whereupon plaintiffs made a motion for judgment by default under the provision of Section 724 of the Revised Statutes of the United States, which motion was duly granted, and an order made to that effect, ordering the Clerk of this Court to direct a writ of inquiry to the Marshal of the United States of this District to summon and convene a jury, who should assess such damages as plaintiff had suffered in the premises.

Thereafter, and on the 27th day of August, in pursuance of said order, the Clerk of this Court duly issued such writ of inquiry to the said United States Marshal, who, in compliance therewith, upon the 29th day of August, 1907, duly called and impanelled said jury, who, upon being chosen, tried and sworn, and upon their oath, found that the plaintiff herein had sustained damages by reason of the premises in said writ mentioned to the amount of two thousand two hundred and seventy-five (2,275) dollars, and therefore the damages sustained by the plaintiff by reason of the matters alleged in the complaint having thus been duly assessed at the said sum of two thousand two hundred and seventy-five (2,275) dollars, pursuant to said writ of inquiry by the said jury, under the direction of this Court, and after due notice to the defendants, and plaintiff's costs having been duly taxed at sixty-five and 45/100 (65.45) dollars.

Now, on motion of Boothby & Baldwin, attorneys for the plaintiff,

It is adjudged that the plaintiff, David J. Winn, recover of the defendants, Nathaniel L. Carpenter, Joseph N. Carpenter, Atmore L. Baggot and Sterrett Tate, two thousand two hundred and seventy-five (2,275) dollars, the damages thus assessed, with sixty-
48 five and 45/100 (65.45) dollars costs, as taxed, amounting in all to the sum of twenty-three hundred and forty and 45/100 dollars. Judgment this 18th day of September, 1907.

(Signed)

JOHN A. SHIELDS, *Clerk*.

(Endorsed:) Filed Sept. 18, 1907.—John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

At Law.

DAVID J. WINN, Plaintiff,
against

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Defendants.

Assignment of Errors.

Come now the defendants and file the following assignments of errors upon which they and each of them will rely upon their prosecution of the writ of error in the above-entitled cause:

I. That the United States Circuit Court, in and for the Southern District of New York, erred in passing the order of June 25th, 1907, granting the application of the plaintiff for an inspection of all defendants' books, papers, writings, account books, day books, blotters, journals, registers, cash books, bill books, letter books sales books, check books, contracts, contract slips and memoranda, made or
49 received by them, their agents or employees, which contain any memoranda of any business transactions had for and in behalf of, or relating to, the plaintiff herein, for the years 1905 and 1906, and more particularly of the purchase and sale of two hundred bales of cotton, one hundred deliverable in November and one hundred deliverable in December, 1906, or which relate in any way to the purchase and sale of said cotton, either alleged to have been made for the account of the plaintiff herein or P. G. Bowman, of Sumter, South Carolina, or for the Sumter Banking and Mercantile Company, or any part of any such books, documents or writings which, in any way, refer to or contain entries of, or mention the two hundred bales of cotton set forth in the complaint herein, and requiring defendants, before the 15th day of July, 1907, which was long before the case could be reached on the calendar for trial, to produce the same, and permit plaintiff and his attorneys to examine and investigate the same, over the objection by the defendants, through their attorney, that Section 724 of the Revised Statutes of the United States does not authorize the compulsion of defendants to produce the same before the trial of said cause.

II. That said Court erred in passing the order of June 25th, 1907, granting the application of said plaintiff to permit him and his attorneys to make copies and extracts from said documents, books and writings, and directing said defendants to permit plaintiff and his attorneys to make copies and extracts from the same before July 15, 1907, which was long before the case could be reached on the calendar for trial, over the objection by said defendants, through their attorney, that Section 724 of the Revised Statutes of the United States does not authorize the compulsion of defendants to permit copies of their said documents, books and writings to be made before the trial.

50 III. That said Court erred in passing said order of June 25th, 1907, granting the application of plaintiff for the direction that the defendants, upon default to comply with said order and produce their documents, books and writings before July 15, 1907, which was long before the case could be reached on the calendar for trial, should suffer judgment against them as in cases of nonsuit, and in directing that the defendants, upon failure to comply with said order, should suffer judgment against them, as cases of nonsuit, over the objection by defendants, through their attorney, that Section 724 of the Revised Statutes of the United States does not authorize the granting of such judgment before the trial of the case.

IV. That said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same, and to make copies and extracts therefrom, over the objection by defendants, through their attorney, that plaintiff had no right to see defendants' books at any time until he had proved on the trial that defendants were his agents.

V. That said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same and to make copies and extracts therefrom, over the objection by defendants, through their

51 attorney, that plaintiff did not allege or show that defendants had any of his papers, or that plaintiff had any need for an examination or inspection of the same, inasmuch as the complaint shows that plaintiff's attorneys were willing to swear to the complaint on the proofs that he had.

VI. That said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same and to make copies and extracts therefrom, over the objection by defendants, through their attorney, that if plaintiff needed any other evidence than he had it could be

given by Bowman and the Sumter Banking and Mercantile Company, who reside in the same town with plaintiff, in Sumter, South Carolina.

VII. That said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same and to make copies and extracts therefrom, over the objection by defendants, through their attorney, that the motion to inspect the books was merely in order to search and know the evidence of the defendants.

IX. That said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same and to make copies and extracts therefrom, over the objection by defendants, through their attorney, that the books of the defendants are here within the jurisdiction of the Court and a subpoena *duces tecum* will produce them on the trial.

X. That said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same and to make copies and extracts therefrom, over the objections by defendants, through their attorney, that the defendants have given Bowman the names of the brokers of whom they bought and to whom they sold.

XI. The said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same and to make copies and extracts therefrom over the objection by defendants, through their attorney, that plaintiff's attorneys are attorneys for brokers who are rivals of defendants, and therefore should not be permitted to see defendants' books.

XII. That said Court, if it had discretion to direct defendants to produce their documents, books and writings for examination and inspection by the plaintiff and his attorneys before the trial of the action, erred in the exercise of said discretion in passing said order of June 25th, 1907, permitting the plaintiff and his attorneys to examine and investigate the same and to make copies and extracts therefrom, over the objection by defendants, through their attorney, that if plaintiff's attorneys should be permitted to see the books of the defendants it should be only at the

trial, where, if they are ruled to be admissible as testimony for plaintiff, plaintiff's attorneys could easily understand the items.

XIII. That the United States Circuit Court, in and for the Southern District of New York, erred in passing the order of July 31, 1907, at least a year before the case could be reached on the calendar for trial, granting the application of the plaintiff for judgment by default against the defendants and in favor of the plaintiff, pursuant to Section 724 of the Revised Statutes of the United States, and declaring the defendants to be in default and authorizing and empowering plaintiff to enter judgment against the defendants by default and directing that a writ of inquiry be issued to assess the damages and for legal costs and disbursements, over the objection by the defendants that said Court had no jurisdiction, authority or discretion to grant said order declaring the defendants to be in default and authorizing and empowering the plaintiff to enter judgment against the defendants by default and to issue a writ of inquiry to assess the damages before the trial of the action.

XIV. That the said Court erred in granting judgment by default under the provisions of Section 724 of the Revised Statutes of the United States, directing that the plaintiff, David J. Winn, recover of the defendants, Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggott and Sterrett Tate, two thousand 54 two hundred and seventy-five (\$2,275) dollars with sixty-five and 45/100 (\$65.45) dollars costs, amounting in all to the sum of twenty-three hundred and forty and 45/100 (\$2,340.45) dollars, and in entering said judgment against said defendants in favor of said plaintiff on the 18th day of September, 1907, a year at least before the case could be reached on the calendar for trial, and therefore contrary to the provisions of said Section 724 of the Revised Statutes of the United States and contrary to law.

Wherefore, the said defendants and plaintiffs in error pray that the judgment of the said Court and the said orders of June 25th, 1907, and July 31st, 1907, be reversed.

JOHN R. ABNEY,

Attorney for Defendants and Plaintiffs in Error.

(Endorsed:) Filed Oct. 16, 1907.—John A. Shields, Clerk.

55 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

DAVID J. WINN

vs.

NATHANIEL L. CARPENTER, JOSEPH N. CARPENTER, ATMORE L. BAGGOTT, and STERRETT TATE, Defendants.

Bond for Damages and Costs.

Know all men by these presents, That the United States Fidelity and Guaranty Company, having an office and principal place of business at No. 61 Liberty Street, in the City of New York, County

and State of New York, is held and firmly bound unto the above-named David J. Winn in the sum of twenty-eight hundred and seventy-two dollars, to be paid to the said David J. Winn, for the payment of which well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with its seal, and dated the 11th day of October, in the year of our Lord one thousand nine hundred and seven.

Whereas, the above-named Nathaniel L. Carpenter, Joseph N. Carpenter, Atmore L. Baggott and Sterrett Tate have prosecuted their writ of error to the United States Circuit Court of Appeals for the Second Circuit, to reverse the judgment rendered in the above-entitled suit, by the judge of the Circuit Court of the United States for the Southern District of New York.

56 Now, therefore, the condition of this obligation is such that if the above-named Nathaniel L. Carpenter, Joseph N. Carpenter, Atmore L. Baggott and Sterrett Tate shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered, and taken and acknowledged this 11th day of Oct., 1907, before me.

THE UNITED STATES FIDELITY
AND GUARANTY COMPANY,
By SYLVESTER J. O'SULLIVAN, *Manager*.

Attest:

GEORGE E. HAYES,
Attorney-in-Fact.

At a regular meeting of the Board of Directors of The United States Fidelity and Guaranty Company, duly called and held on the sixth day of May, A. D. 1907, at the office of the company, in the City of Baltimore, State of Maryland, a quorum being present, on motion it was unanimously

Resolved, that Sylvester J. O'Sullivan, manager, or Leonidas Dennis, or George E. Hayes, or Charles W. Young, or Alonzo G. Oakley, or W. C. Shryver, or Gilman Ashburner, or Louis B. Caziarc, or Harry C. Harden, or Adolphus A. Jackson, or A. Van Tambacht, attorneys-in-fact of this company, in the State of New York, be and they hereby are, and each of them is authorized and empowered to execute and deliver and to attach the seal of the company to any and all bonds and undertakings for or on behalf of the company, in its business of guaranteeing the fidelity of persons holding places
57 of public or private trust and the performance of contracts other than insurance policies, and executing or guaranteeing bonds and other undertakings required or permitted in all actions or proceedings or by law required; such bonds and undertakings, however, to be attested in every instance by one other of the persons above named as occasion may require.

I, George E. Hayes, attorney-in-fact of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said

company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at the City of New York this 11th day of October, 1907.

GEORGE E. HAYES,
Attorney-in-Fact.

STATE OF NEW YORK,
City and County of New York, ss:

On this 11th day of October, 1907, before me personally appeared Sylvester J. O'Sullivan, manager of the United States Fidelity and Guaranty Company, in the State of New York, with whom I am personally acquainted, who, being by me duly sworn, said: That he resides in the State of New York; that he is manager of the United States Fidelity and Guaranty Company in the State of New York, the corporation described in and which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such seal; that it was so affixed by the order of Board of Directors, and that he signed his name thereto as manager by like authority.

And the said Sylvester J. O'Sullivan further says that he is acquainted with George E. Hayes and knows him to be one of
58 the attorneys-in-fact of the said company; that the signature of the said George E. Hayes subscribed to the said instrument is in the genuine handwriting of the said George E. Hayes and was thereto subscribed by the like order of said Board of Directors and in the presence of him, the said Sylvester J. O'Sullivan.

DANIEL C. DEASY,
Notary Public, New York County.

(Endorsed:) Approved October 16, 1907, Geo. C. Holt, J.—
Filed Oct. 16, 1907.—John A. Shields, Clerk.

59 By the Honorable George C. Holt, U. S. District Judge holding Circuit Court of the United States for the Southern District of New York, in the Second Circuit, to David J. Winn, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 12th day of November, 1907, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggott and Sterrett Tate are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error men-ioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 16th day of October, in the year of our Lord one thousand nine hundred

seven, and of the Independence of the United States the one hundred and thirty-second.

GEORGE C. HOLT,
*U. S. District Judge Holding Circuit Court
of the United States for the Southern
District of New York, in the Second Cir-
cuit.*

(Endorsed:) Copy received October 17, 1907. Boothby & Baldwin, att'ys for def't in error.—Filed Oct. 17, 1907.—John A. Shields, Clerk.

60 United States Circuit Court of Appeals for the Second Circuit.

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Plaintiffs in Error,
against
DAVID J. WINN, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed that the foregoing contains all of the record herein certified by the Clerk of the United States Circuit Court, which is necessary or material to be printed, and that the foregoing agreements shall be printed in lieu of the several papers omitted.

Dated New York, December 24, 1907.

JOHN R. ABNEY,
Attorney for Plaintiffs in Error.
BOOTHBY & BALDWIN,
Attorneys for Defendant in Error.

So ordered.

E. HENRY LACOMBE,
U. S. C. J.

61 United States Circuit Court of Appeals for the Second Circuit.

No. 19, October Term, 1908.

Argued October 13, 1908; Decided November 16, 1908.

JOSEPH N. CARPENTER et al., Plaintiffs in Error,

vs.

DAVID J. WINN, Defendant in Error.

In Error to the Circuit Court of the United States for the Southern District of New York.

Before Judges Lacombe, Coxe, and Ward.

This cause comes here upon writ of error to review a judgment of the Circuit Court, Southern District of New York, entered against

plaintiffs in error who were defendants below. The action was brought at law to recover damages claimed to have been sustained on contracts for the purchase of cotton on the floor of the New York Cotton Exchange, which contracts plaintiff below alleged he employed defendants to make in their own names but in his behalf. It was alleged that they sold out the same without calling on him for margin and without his consent.

After the cause was at issue plaintiff made a motion under Sec. 724 of the U. S. Revised Statutes for an order directing defendants to exhibit their books before trial and permit plaintiff to investigate copy and make abstracts of the same. The motion was 62 granted and order to that effect made and served. Defendants refused to comply with such order on the ground that the court had not authority to make it. Thereupon, motion being duly made, the court gave judgment against defendants by default, as prescribed in the section above cited.

Per Curiam:

The question whether under Sec. 724 a party could be required to produce his books and papers before trial is one which has been frequently considered; the decisions rendered in different districts are not harmonious. A very full review of these decisions will be found in *Bloede v. Bancroft* (C. C. District of Delaware) (98 F. R. 175) where it was held that production of the books in advance of trial could be required. Since that decision, however, the Circuit Court of Appeals in the Third Circuit has held the other way. *Cassatt v. Mitchell Coal & Coke Co.* (150 F. R. 32). A majority of us are in accord with the reasoning and conclusion in *Bloede v. Bancroft*, and since the practice there approved has been the practice in this circuit for several years and is in harmony with the provisions of the State Code of Procedure we are all unwilling to adopt the conclusions of the Court of Appeals of the Third Circuit. Moreover the weight of decisions in the different circuits seems to be in accord with *Bloede v. Bancroft*. It is unfortunate, perhaps, that there should be diversity in the practice in different circuits, but the remedy for that would be an application for *certiorari* to the Supreme Court.

The judgment is affirmed.

John R. Abney, for the Plaintiffs in Error.

Ernest E. Baldwin, for the Defendant in Error.

63 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 27th day of November, one thousand nine hundred and eight.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry G. Ward, Circuit Judges.

JOSEPH N. CARPENTER et al., Plaintiffs in Error,
vs.

DAVID J. WINN, Defendant in Error.

Error to the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said Circuit Court be and it hereby is affirmed with costs.

E. H. L. It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

64 Endorsed: United States Circuit Court of Appeals, Second Circuit. J. N. Carpenter vs. D. J. Winn. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 27, 1908. William Parkin, Clerk.

65 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 64 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Joseph N. Carpenter et al. against David J. Winn as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 31st day of December in the year of our Lord One Thousand Nine Hundred and Eight and of the Independence of the United States the One Hundred and thirty-third.

[Seal United States Circuit Court of Appeals,
Second Circuit.]

WM. PARKIN, *Clerk.*

66 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate are plaintiffs in error, and David J. Winn is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the

67 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 1st day of February, in the year of our Lord one thousand nine hundred and nine.

JAMES H. MCKENNEY,

Clerk of the Supreme Court of the United States.

68 [Endorsed:] File No. 21,479. Supreme Court of the United States. No. 683, October Term, 1908. Joseph N. Carpenter et al. vs. David J. Winn. Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 5, 1909. William Parkin, Clerk.

69 United States Circuit Court of Appeals for the Second Circuit.

JOSEPH N. CARPENTER, NATHANIEL L. CARPENTER, ATMORE L. BAGGOT, and STERRETT TATE, Plaintiffs in Error,

against

DAVID J. WINN, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed that the certified transcript of the record of this case filed in the office of the Clerk of the Supreme Court of the United States with the application for the writ of certiorari may be taken as a return to the writ of certiorari granted herein, dated the 1st day of February 1909.

Dated, New York, February 3, 1909.

JOHN R. ABNEY,

Attorney for Joseph N. Carpenter et al.,

Plaintiffs in Error.

BOOTHBY & BALDWIN,

Attorneys for David J. Winn, Defendant in Error.

70 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. Joseph N. Carpenter, Nathaniel L. Carpenter, Atmore L. Baggot and Sterrett Tate, Plaintiffs in Error, against David J. Winn, Defendant in Error. Stipulation. John R. Abney, Attorney for pl'ffs in error, 27 William Street, Borough of Manhattan, New York City. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 5, 1909. William Parkin, Clerk.

71 To the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the Clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated New York, February 6th, 1909.

[Seal United States Circuit Court of Appeals,
Second Circuit.]

WM. PARKIN,
*Clerk of the United States Circuit Court
of Appeals for the Second Circuit.*

72 [Endorsed:] 683, 21479. United States Circuit Court of Appeals, Second Circuit. Joseph N. Carpenter et al. v. David J. Winn. Return to Certiorari.

73 [Endorsed:] File No. 21,479. Supreme Court U. S., October Term, 1908. Term No. 683. Joseph N. Carpenter et al., Petitioners, vs. David J. Winn. Writ of Certiorari and return. Filed Feb'y 9th, 1909.